

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BURTON KRAUS, on
behalf of herself and all other similarly situated,

Plaintiff,

-against-

SNOW TEETH WHITENING LLC d/b/a SNOW,
FORESOLD LLC d/b/a FORESOLD, JOSHUA
ELIZETXE,

Defendants.

AZRACK, United States District Judge:

For Online Publication Only

ORDER

20-cv-6085 (JMA)(ST)

**FILED
CLERK**

12:50 pm, Sep 30, 2022

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

On April 2, 2021, Plaintiff Burton Kraus (“Plaintiff”), on behalf of himself and others similarly situated, filed his First Amended Complaint (“FAC”) against Defendants Snow Teeth Whitening LLC (“Snow”), Foresold LLC (“Foresold”), and Joshua Elizetxe (“Elizetxe”) (collectively, “Defendants”) alleging claims for false advertisements in violation of New York General Business Law §§ 349 and 350, breach of express warranty, breach of implied warranty of merchantability, and unjust enrichment. (ECF No. 23.) On December 16, 2021, Defendants moved to dismiss the FAC for Plaintiff’s lack of Article III standing pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (“FRCP”), which the Court referred to Magistrate Judge Tiscione. (Electronic Order, 12/16/2021.) On September 15, 2022, Magistrate Judge Tiscione issued the Report and Recommendation (“R&R”), currently before the Court, recommending that Defendants’ Motion to Dismiss be granted. No objections have been filed and the time for doing so has since passed. For the reasons stated below, the R&R is adopted in its entirety.

“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” Smith v. Campbell, 782 F.3d 93, 102 (2d Cir. 2015) (quoting Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002)); see also Phillips v. Long Island R.R. Co., 832 F. App’x 99, 100 (2d Cir. 2021) (same). In the absence of any objections, “the district court need only satisfy itself that there is no clear error on the face of the record.” Estate of Ellington ex rel. Ellington v. Harbrew Imports Ltd., 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (internal citations omitted).

The Court has reviewed the record and the unopposed R&R for clear error and, finding none, hereby adopts Judge Tiscione’s R&R in its entirety as the opinion of the Court. Accordingly, Defendants’ motion to dismiss is GRANTED. The Clerk is directed to close this case.

SO ORDERED.

Dated: September 30, 2022
Central Islip, New York

_____/s/ JMA_____
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE